

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BOARD OF TRUSTEES OF THE LOCAL)
295/LOCAL 851 – I.B.T. EMPLOYER)
GROUP PENSION TRUST FUND and the)
BOARD OF TRUSTEES OF THE LOCAL)
295/LOCAL 851 – I.B.T. EMPLOYER)
GROUP WELFARE FUND,)

Case No. 08-525 (LAK) (FM)

Plaintiffs,

vs.

EMPIRE FREIGHT SYSTEMS CORP.,

Defendant.

AFFIDAVIT IN SUPPORT OF ATTORNEYS' FEE APPLICATION

STATE OF NEW YORK)

ss.:

COUNTY OF NEW YORK)

RACHEL PASTER, being duly sworn, deposes and says:

1. I am an attorney at law admitted to practice before this Court. I am associated with the law firm of Cary Kane LLP, attorneys for the plaintiffs. I make this affidavit in support of plaintiffs' request for attorneys' fees.

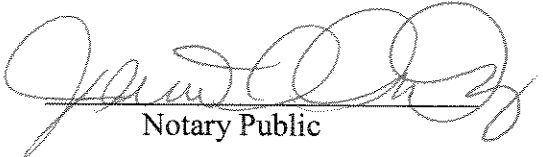
2. The attached chart describes the services rendered and is based on records maintained contemporaneously with the work performed, which records are provided herewith. In summary, there were 1.75 hours of attorney time at a rate of \$175.00 per hour, and 13.25 hours of attorney time at a rate of \$250.00 per hour for a total fee of \$3,618.75 incurred in the prosecution of this action, which is a reasonable fee and hourly rates for litigation of this type in this Court.

3. The legal services rendered in this action were reasonable, proper and necessary.

WHEREFORE, it is respectfully requested that attorneys' fees be awarded in the amount of \$3,618.75, pursuant to and as provided for in ERISA, Section 502(g)(1) and (2), 29 U.S.C. §1132(g)(1) and (2).


RACHEL S. PASTER

Sworn to before me this
20 day of March 2008


Notary Public

JANET I. CRUZ-DIAZ
Notary Public, State of New York
No. 01CR6018875
Qualified in Richmond County
Commission Expires January 19, 2011

Record Of Plaintiffs' Legal Fees in Local 295/851 Funds v. Empire Freight/ Case No. 08-525 (LAK) (FM)

<u>Date</u>	<u>Attorney or paralegal</u>	<u>Description Of Work</u>	<u>Time (Hours)</u>	<u>Rate Per Hour</u>	<u>Fee</u>
31-Jan-07	L. Cary (partner)	Reviewing settlement papers. Consult with RP	0.50	175	87.50
14-Mar-07	L. Cary (partner)	Telephone conference with L. Kellner	0.25	175	43.75
227-Mar-07	R. Paster (attorney)	Review correspondence from client. Review and revise settlement agreement.	0.50	175	87.50
28-Mar-07	R. Paster (attorney)	Draft correspondence to Frank DeJohn, president of Empire, re: settlement agreement; review and revise settlement agreement.	0.50	175	87.50
2-Aug-07	J. Parkhurst (attorney)	Review correspondence from fund office, telephone call with L. Kellner, conference with L.C.	0.50	250	125.00
3-Aug-07	J. Parkhurst (attorney)	Telephone call with L. Kellner, review correspondence from L. Kellner	0.25	250	62.50
8-Aug-07	J. Parkhurst (attorney)	Review correspondence from L. Kellner, draft e-mail to L.C.	0.25	250	62.50
9-Aug-07	J. Parkhurst (attorney)	Telephone call with L. Kellner, review settlement agreement	0.25	250	62.50
3-Oct-07	J. Parkhurst (attorney)	Review correspondence from Fund office, review file.	0.25	250	62.50
5-Oct-07	J. Parkhurst (attorney)	Telephone call with fund office, review file.	0.25	250	62.50
16-Oct-07	R. Paster (attorney)	Reviewing documents in file. Draft complaint.	1.00	250	250.00
17-Oct-07	R. Paster (attorney)	Draft complaint. Draft correspondence to L. Kellner re: same.	0.50	250	125.00
23-Oct-07	R. Paster (attorney)	Considering issues re: collection of delinquency. Email to N. Savasta re: same. Confer with L. Kellner re: same.	0.25	250	62.50
17-Jan-08	R. Paster (attorney)	Review correspondence from client. Telephone conference with L. Kellner re: same. Draft Complaint, Summons and Civil Cover Sheet. Prepare same for service and filing.	2.50	250	625.00
27-Feb-08	R. Paster (attorney)	Review case file and court filing. Email correspondence with L. Kellner re: amounts paid by Empire.	0.25	250	62.50
28-Feb-07	R. Paster (attorney)	Draft default judgment paper. Email correspondence with L. Kellner re: interest rate.	4.00	250	1,000.00
3-Mar-08	R. Paster (attorney)	Review correspondence from L. Kellner re: interest owed. Draft default judgment papers.	3.00	250	750.00
		TOTAL	15.00		\$3,618.75

3/13/2008
3:26 PMCary Kane LLP
Slip Listing

Page 1

Selection Criteria

Slip Classification	Open
Matt. Selection	Include: Empire; Empire

Rate Info - identifies rate source and level

Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client		Bill Status	
Description		Matter	Variance		
<u>Timekeeper: Cary</u>					
15827	TIME	Cary	0.25	175.00	43.75
1/31/2007		Legal Services	0.00	T@15	
Billed	G:11260	2/1/2007 Local 295/851-PF COL			
Review of settlement papers; consult with RP.		Empire	0.00		
15828	TIME	Cary	0.25	175.00	43.75
1/31/2007		Legal Services	0.00	C@1	
Billed	G:11262	2/1/2007 Local 295/851-WF COL			
Review of settlement papers; consult with RP.		Empire	0.00		
Total: 1/31/2007					
		Billable	0.50		87.50
		Unbillable	0.00		0.00
		Total	0.50		87.50
16762	TIME	Cary	0.25	175.00	43.75
3/14/2007		Legal Services	0.00	C@1	
Billed	G:11363	4/1/2007 Local 295/851-PF COL			
Telephone with LK.		Empire	0.00		
Total: 3/14/2007					
		Billable	0.25		43.75
		Unbillable	0.00		0.00
		Total	0.25		43.75
Total: Cary					
		Billable	0.75		131.25
		Unbillable	0.00		0.00
		Total	0.75		131.25

3/13/2008
3:26 PMCary Kane LLP
Slip Listing

Page 2

Slip ID	Timekeeper	Units	Rate	Slip Value
Dates and Time	Activity	DNB Time	Rate Info	
Posting Status	Client		Bill Status	
Description	Matter	Variance		
<u>Timekeeper: Hewitt</u>				
24785	TIME	Hewitt	0.75	125.00
1/18/2008	Legal Services	0.00	C@2	93.75
Billed	G:12032	2/1/2008	Local 295/851-WF COL	
Assembled Summons and Complaint to be filed in Empire		0.00		
the Southern District Court				
<hr/>				
Total: 1/18/2008	Billable	0.75		93.75
	Unbillable	0.00		0.00
	Total	0.75		93.75
<hr/>				
Total: Hewitt	Billable	0.75		93.75
	Unbillable	0.00		0.00
	Total	0.75		93.75

3/13/2008
3:26 PMCary Kane LLP
Slip Listing

Page 3

Slip ID Dates and Time Posting Status Description	Timekeeper Activity Client Matter	Units DNB Time Variance	Rate Rate Info Bill Status	Slip Value
<u>Timekeeper: Parkhurst</u>				
20609 TIME	Parkhurst	0.25	250.00	62.50
8/2/2007	Legal Services	0.00	C@1	
Billed G:11681	9/4/2007 Local 295/851-PF COL			
Review correspondence from fund office, telephone call with L. Kellner, conference with LC.	Empire	0.00		
20610 TIME	Parkhurst	0.25	250.00	62.50
8/2/2007	Legal Services	0.00	C@1	
Billed G:11683	9/4/2007 Local 295/851-WF COL			
Review correspondence from fund office, telephone call with L. Kellner, conference with LC.	Empire	0.00		
<hr/>				
Total: 8/2/2007	Billable	0.50		125.00
	Unbillable	0.00		0.00
	Total	0.50		125.00
20643 TIME	Parkhurst	0.25	250.00	62.50
8/3/2007	Legal Services	0.00	C@1	
Billed G:11681	9/4/2007 Local 295/851-PF COL			
Telephone call with L. Kellner, review correspondence from L. Kellner.	Empire	0.00		
<hr/>				
Total: 8/3/2007	Billable	0.25		62.50
	Unbillable	0.00		0.00
	Total	0.25		62.50
20690 TIME	Parkhurst	0.25	250.00	62.50
8/8/2007	Legal Services	0.00	C@1	
Billed G:11683	9/4/2007 Local 295/851-WF COL			
Review correspondence from L. Kellner, draft e-mail to LC.	Empire	0.00		
<hr/>				
Total: 8/8/2007	Billable	0.25		62.50
	Unbillable	0.00		0.00
	Total	0.25		62.50
20717 TIME	Parkhurst	0.25	250.00	62.50
8/9/2007	Legal Services	0.00	C@1	
Billed G:11683	9/4/2007 Local 295/851-WF COL			
Telephone call with L. Kellner, review settlement agreement.	Empire	0.00		

3/13/2008
3:26 PMCary Kane LLP
Slip Listing

Page 4

Slip ID	Timekeeper	Units	Rate	Slip Value
Dates and Time	Activity	DNB Time	Rate Info	
Posting Status	Client		Bill Status	
Description	Matter	Variance		
Total: 8/9/2007				
	Billable	0.25		62.50
	Unbillable	0.00		0.00
	Total	0.25		62.50
22102	Parkhurst	0.25	250.00	62.50
10/3/2007	Legal Services	0.00	C@1	
Billed	G:11815			
11/1/2007	Local 295/851-PF COL			
Review correspondence from fund office, review file.	Empire	0.00		
Total: 10/3/2007				
	Billable	0.25		62.50
	Unbillable	0.00		0.00
	Total	0.25		62.50
22231	Parkhurst	0.25	250.00	62.50
10/5/2007	Legal Services	0.00	C@1	
Billed	G:11817			
11/1/2007	Local 295/851-WF COL			
Telephone call with fund office, review file.	Empire	0.00		
Total: 10/5/2007				
	Billable	0.25		62.50
	Unbillable	0.00		0.00
	Total	0.25		62.50
Total: Parkhurst				
	Billable	1.75		437.50
	Unbillable	0.00		0.00
	Total	1.75		437.50

3/13/2008
3:26 PMCary Kane LLP
Slip Listing

Page 5

Slip ID	Timekeeper	Units	Rate	Slip Value
Dates and Time	Activity	DNB Time	Rate Info	
Posting Status	Client		Bill Status	
Description	Matter	Variance		
<u>Timekeeper: Paster</u>				
17095	TIME	Paster	0.50	175.00
3/27/2007		Legal Services	0.00	C@1
Billed	G:11363	4/1/2007	Local 295/851-PF COL	
Review correspondence from client. Review and	Empire	0.00		
revise Settlement Agreement.				
<hr/>				
Total: 3/27/2007				
	Billable	0.50		87.50
	Unbillable	0.00		0.00
	Total	0.50		87.50
<hr/>				
17146	TIME	Paster	0.25	175.00
3/28/2007		Legal Services	0.00	C@1
Billed	G:11363	4/1/2007	Local 295/851-PF COL	
Review and revise Settlement Agreement	Empire	0.00		
<hr/>				
17224	TIME	Paster	0.25	175.00
3/28/2007		Legal Services	0.00	C@1
Billed	G:11365	4/1/2007	Local 295/851-WF COL	
Draft correspondence to Frank DeJohn, president	Empire	0.00		
of Empire Freight, re Settlement Agreement.				
<hr/>				
Total: 3/28/2007				
	Billable	0.50		87.50
	Unbillable	0.00		0.00
	Total	0.50		87.50
<hr/>				
22452	TIME	Paster	0.50	250.00
10/16/2007		Legal Services	0.00	C@1
Billed	G:11815	11/1/2007	Local 295/851-PF COL	
Reviewing documents in file. Draft Complaint.	Empire	0.00		
<hr/>				
22451	TIME	Paster	0.50	250.00
10/16/2007		Legal Services	0.00	C@1
Billed	G:11817	11/1/2007	Local 295/851-WF COL	
Reviewing documents in file. Draft Complaint.	Empire	0.00		
<hr/>				
Total: 10/16/2007				
	Billable	1.00		250.00
	Unbillable	0.00		0.00
	Total	1.00		250.00

3/13/2008
3:26 PMCary Kane LLP
Slip Listing

Page 6

Slip ID	Timekeeper		Units	Rate	Slip Value
Dates and Time	Activity		DNB Time	Rate Info	
Posting Status	Client			Bill Status	
Description	Matter		Variance		
22463	TIME	Paster	0.25	250.00	62.50
10/17/2007	Legal Services		0.00	C@1	
Billed	G:11817	11/1/2007	Local 295/851-WF COL		
Draft complaint. Draft correspondence to L. Kellner	Empire		0.00		
re: same.					
22464	TIME	Paster	0.25	250.00	62.50
10/17/2007	Legal Services		0.00	C@1	
Billed	G:11815	11/1/2007	Local 295/851-PF COL		
Draft complaint. Draft correspondence to L. Kellner	Empire		0.00		
re: same.					
<hr/>					
Total: 10/17/2007	Billable		0.50		125.00
	Unbillable		0.00		0.00
	Total		0.50		125.00
22659	TIME	Paster	0.25	250.00	62.50
10/23/2007	Legal Services		0.00	C@1	
Billed	G:11817	11/1/2007	Local 295/851-WF COL		
Considering issues re: collection of delinquency.	Empire		0.00		
Email to N. Savasta re: same. Confer with L.					
Kellner re: same.					
<hr/>					
Total: 10/23/2007	Billable		0.25		62.50
	Unbillable		0.00		0.00
	Total		0.25		62.50
24781	TIME	Paster	1.25	250.00	312.50
1/17/2008	Legal Services		0.00	C@1	
Billed	G:12030	2/1/2008	Local 295/851-PF COL		
Review correspondence from client. Telephone	Empire		0.00		
conference with L. Kellner re: same. Draft					
Complaint, Summons, and Civil Cover sheet.					
Prepare same for service and filing.					
24782	TIME	Paster	1.25	250.00	312.50
1/17/2008	Legal Services		0.00	C@1	
Billed	G:12032	2/1/2008	Local 295/851-WF COL		
Review correspondence from client. Telephone	Empire		0.00		
conference with L. Kellner re: same. Draft					
Complaint, Summons, and Civil Cover sheet.					
Prepare same for service and filing.					

3/13/2008
3:26 PMCary Kane LLP
Slip Listing

Page 7

Slip ID			Timekeeper	Units	Rate	Slip Value
Dates and Time			Activity	DNB Time	Rate Info	
Posting Status			Client		Bill Status	
Description			Matter	Variance		
Total: 1/17/2008						
			Billable	2.50		625.00
			Unbillable	0.00		0.00
			Total	2.50		625.00
24789	EXP		Paster	1	175.00	175.00
1/18/2008			Filing Fee			
Billed	G:12030	2/1/2008	Local 295/851-PF COL			
Index No. Fee			Empire			
24790	EXP		Paster	1	175.00	175.00
1/18/2008			Filing Fee			
Billed	G:12032	2/1/2008	Local 295/851-WF COL			
Index No. Fee			Empire			
Total: 1/18/2008						
			Billable	0.00		350.00
			Unbillable	0.00		0.00
			Total	0.00		350.00
25838	EXP		Paster	1	96.00	96.00
2/1/2008			Service Fee			
Billed	G:12102	3/1/2008	Local 295/851-PF COL			
Service Fee			Empire			
25840	EXP		Paster	1	96.00	96.00
2/1/2008			Service Fee			
Billed	G:12104	3/1/2008	Local 295/851-WF COL			
Service Fee			Empire			
Total: 2/1/2008						
			Billable	0.00		192.00
			Unbillable	0.00		0.00
			Total	0.00		192.00
25788	TIME		Paster	0.25	250.00	62.50
2/27/2008			Legal Services	0.00	C@1	
Billed	G:12102	3/1/2008	Local 295/851-PF COL			
Review case file and court filing. Email			Empire	0.00		
correspondence with L. Kellner re: amounts paid						
by Empire.						
Total: 2/27/2008						
			Billable	0.25		62.50

3/13/2008
3:26 PMCary Kane LLP
Slip Listing

Page 8

Slip ID	Dates and Time	Posting Status	Description	Timekeeper	Activity	Client	Matter	Units	DNB Time	Rate	Rate Info	Bill Status	Slip Value
								Variance					
					Unbillable			0.00					0.00
					Total			0.25					62.50
25789	TIME			Paster				2.50		250.00			625.00
2/28/2008				Legal Services				0.00		C@1			
Billed	G:12102	3/1/2008		Local 295/851-PF COL									
			Draft default judgment papers. Email correspondence with L. Kellner re: interest rate.	Empire				0.00					
25790	TIME			Paster				2.50		250.00			625.00
2/28/2008				Legal Services				0.00		C@1			
Billed	G:12104	3/1/2008		Local 295/851-WF COL									
			Draft default judgment papers. Email correspondence with L. Kellner re: interest rate.	Empire				0.00					
Total: 2/28/2008													
				Billable				5.00					1250.00
				Unbillable				0.00					0.00
				Total				5.00					1250.00
26180	TIME			Paster				1.50		250.00			375.00
3/13/2008				Legal Services				0.00		C@1			
WIP				Local 295/851-PF COL									
			Review correspondence from L. Kellner re: interest owed. Draft default judgment papers.	Empire				0.00					
26181	TIME			Paster				1.50		250.00			375.00
3/13/2008				Legal Services				0.00		C@1			
WIP				Local 295/851-WF COL									
			Review correspondence from L. Kellner re: interest owed. Draft default judgment papers.	Empire				0.00					
Total: 3/13/2008													
				Billable				3.00					750.00
				Unbillable				0.00					0.00
				Total				3.00					750.00
Total: Paster													
				Billable				13.50					3842.00
				Unbillable				0.00					0.00
				Total				13.50					3842.00
Grand Total													
				Billable				16.75					4504.50

3/13/2008
3:26 PM

Cary Kane LLP
Slip Listing

Page 9

Slip ID	Timekeeper	Units	Rate	Slip Value
Dates and Time	Activity	DNB Time	Rate Info	
Posting Status	Client		Bill Status	
Description	Matter	Variance		
	Unbillable	0.00		0.00
	Total	16.75		4504.50